IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS ABILENE DIVISION

RAYMOND RAY NIETO, JR., TDCJ No. 01723724,)
	Plaintiff,)
V.) CIVIL ACTION NO. 1:16-CV-188-C
FNU HONEE, et al.,)
	Defendants.)

ORDER ACCEPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff, proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint on October 24, 2016.¹ Pursuant to Special Order No. 3-301, this case was assigned to the docket of the United States Magistrate Judge for screening under 28 U.S.C. §§ 1915 and 1915A. The United States Magistrate Judge entered a Report and Recommendation on June 5, 2018, recommending that the instant complaint be dismissed with prejudice as barred by the statute of limitations and for failure to state a claim upon which relief may be granted. Plaintiff did not file any objection and the time to do so has passed.

The undersigned Senior United States District Judge has conducted an independent review of the relevant portions of the record in this case and has examined the findings, conclusions, and recommendations of the Magistrate Judge. The Court ACCEPTS and ADOPTS the findings, conclusions, and recommendation of the United States Magistrate.

¹ See Cooper v. Brookshire, 70 F.3d 377, 379 (5th Cir. 1995) (finding that prisoner's pro se complaint alleging a § 1983 action would be deemed "filed" as of the date he deposited it in the prison mail system, not as of the date it was received by the district court clerk).

IT IS THEREFORE ORDERED that Plaintiff's complaint and all claims alleged therein are **DISMISSED** with prejudice for failure to state a claim upon which relief may be granted.

This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915(g) and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

Dismissal of this action does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See Williams v. Roberts*, 116 F.3d 1126, 1128 (5th Cir. 1997).

A copy of this order shall be sent to all parties appearing *pro se* by first class mail and to any attorney of record by first class mail or electronic notification.

Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA, and he must submit an application to proceed *in forma* pauperis and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Any pending motions are **DENIED**.

Judgment shall be entered accordingly.

SO ORDERED.

Dated August _____, 2018.

SAM/R. CUM/MINGS

Senior United States District Judge